UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

SOUTHERN FOREST WATCH, INC., A Tennessee Public Benefit Corporation, 3701 Lancaster Drive, Knoxville, Tennessee, 37920, JOHN WALTON QUILLEN, 3701 Lancaster Drive, Knoxville, Tennessee, 37920, EARL ROB CAMERON, 8931 Colchester Ridge Road Knoxville, Tennessee, 37922, and GREGORY D. BOSTICK, 132 Lane Road Lenoir City, Tennessee, 37772, Plaintiffs, v. SECRETARY OF THE INTERIOR KENNETH LEE SALAZAR, 1849 C Street Northwest Washington, D.C. 20204 DIRECTOR, NATIONAL PARK SERVICE JONATHAN B. JARVIS, 1849 C Street Northwest Washington, D.C. 20204 SUPERINTENDENT OF THE GREAT SMOKY MOUNTAINS NATIONAL PARK DALE A. DITMANSON 107 Park Headquarters Road Gatlinburg, Tennessee, 37738, and	)	No.

ACTING DEPUTY SUPERINTENDENT)
OF THE GREAT SMOKY MOUNTAINS)
NATIONAL PARK ALAN SUMERISKI)
107 Park Headquarters Road)
Gatlinburg, Tennessee, 37738)
)
Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 as a federal question.

2. Jurisdiction and venue lie in the Eastern District of Tennessee, pursuant to 28 U.S.C. § 1391(e), because the events giving rise to this suit occurred in this district, because one or more of the individual defendants reside in this district and because the individual defendants are officers and employees of an agency of the United States and are being named in their official capacity.

3. This court has jurisdiction over defendants the National Park Service and the U.S. Department of Interior pursuant to 5 U.S.C. § 702.

4. The declaratory relief requested is authorized pursuant to 28 U.S.C. §§ 2201-2202, and 5 U.S.C. § 702.

5. An actual controversy presently exists between the parties concerning the validity of various regulations and actions in adopting a reservation system in order to charge fees and levy a tax for backpacking in the Great Smoky Mountains National Park (hereafter "Smoky Mountains") . That controversy is justiciable in character, and speedy

relief is needed to preserve plaintiffs' rights.

6. A declaratory judgment will terminate the uncertainty and controversy between the parites.

7. A permanent injunction, enjoining defendants from enforcing the challenged reservation system in order to charge fees and levy a tax for backpacking in the Smoky Mountains will protect plaintiffs after the final resolution of these proceedings.

8. Alternatively, the court should remand the proceedings for further and corrected agency consideration.

PARTIES

9. Southern Forest Watch, Inc., is a Tennessee Public Benefit Corporation, existing under the laws of Tennessee with a principal place of business in Knox County, Tennessee (hereafter "Southern Forest Watch")

10. Plaintiffs John Walton Quillen, Earl Rob Cameron and Gregory D. Bostick are citizens and residents of the State of Tennessee.

11. Defendant United States Department of Interior is an agency of the United States of America.

12. Defendant Kenneth D. Salazar is the Secretary of United States Department of the Interior, and he is named as a defendant in that official capacity.

13. Defendant National Park Service (hereafter "NPS") is a "service" of the United States Department of Interior as organized under 16 USC §1, *et seq*.

14. Defendant Jonathan B. Jarvis is the Director of the National Park Service, and he is named as a defendant in that official capacity.

15. Defendant Dale A. Ditmanson is the Superintendent of the Smoky Mountains, and he is named as a defendant in that official capacity.

16. Defendant Alan Sumeriski is the Acting Deputy Superintendent of the Smoky Mountains, and he is named as a defendant in that official capacity.

NATURE OF THE LAWSUIT

17. Plaintiff Southern Forest Watch's members and individual plaintiffs have been free to hike and camp in the backcountry areas of the Smoky Mountains under a volunteer registration system and with no charge.

18. The Smoky Mountains were free to all and use of the backcountry was unimpaired. The backcountry permit system has worked for eight decades.

19. First, for hidden reasons, the defendants determined to limit, control and impair access to the backcountry sections of the Smoky Mountains. The defendants manufactured false justifications and assertions, one after another, in order to dissolve the current working permit system for access to the backcounty sections of the Smoky Mountains and to replace it with another reservation system in order to assert more control and limit access to the backcountry sections of the Smoky Mountains. The defendants provided a *faux* solution for a purported backcountry problem that never existed. The defendants illegitimately resolved to use several false dilemmas in order to limit and restrict use of the Smoky Mountains backcountry.

20. To do so, the defendants orchestrated a corrupt and dishonest administrative process that tarnished the high public value and integrity of the National Park System in derogation of the values and purposes for which the Smoky Mountains were organized and existed for most of a century. The defendants deliberately presented false pictures and public pronouncements and obfuscated the truth. The defendants' administrative process included manufacturing false impressions and facts for public consumption and completely disregarding the truth of matters. The defendants actions were beyond what was allowed by law, outrageous and tyrannical.

21. Defendants implemented a corrupt and devious administrative process with the end goal to control and limit use of the backcountry areas of the Smoky Mountains.

22. Secondly, irrespective of implementing a first time tax to backpack in the Smoky Mountains, the defendants have implemented a backcountry reservation system that is onerous and burdensome to those who wish to backpack, implemented new and absurd rules and regulations, all of which unfortunately do exactly what was intended to do; to wit: restrict and impair use of the Smoky Mountain backcountry, a clear violation of law as set forth hereinafter.

23. Additionally, defendant's corrupt administrative process includes illegal political patronage and favoritism to a select few to the exclusion and detriment of the general public. Such a process has also tarnished the high public value and integrity of the National Park System in derogation of the values and purposes for which the Smoky Mountains exist.

24. Plaintiffs have offered many solutions and tried repeatedly by any number of efforts to resolve this issue with the defendants in order to continue backpacking unimpaired in the Smoky Mountains, but to no avail. Defendants' deliberate actions of ignoring many offered solutions has been outrageous. In light of defendant's refusal to respond to plaintiffs and end its unlawful behavior, plaintiffs bring this present action in order to permit them to resume their unimpaired backpacking in the Smoky Mountains as has been happening for most of a century.

FACTS GIVING RISE TO THIS LAWSUIT

A. Statutory and Regulatory Framework

1. The Park Service Organic Act

25. In 16 U.S.C. § 1, the so-called "Park Service Organic Act," passed in 1916, created the National Park Service. More particularly, it states:

> "There is created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall have substantial experience and demonstrated competence in land management and natural or cultural resource conservation. The Director shall select two Deputy Directors. The first Deputy Director shall have responsibility for National Park Service operations, and the second Deputy Director shall have responsibility for other programs assigned to the National Park Service. There shall also be in said service such subordinate officers, clerks, and employees as may be appropriated for by Congress. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified, except such as are under the jurisdiction of the Secretary of the Army, as provided by law, by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to

provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

26. Later in 16 U.S.C. § 1a-1, Congress supplemented those National Park Service's charges or duties in the "National Park System General Authorities Act."

> "Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to the system. Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 1c of this title, shall be consistent with and founded in the purpose established by section 1 of this title, to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas **shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established**, except as may have been or shall be directly and specifically provided by Congress." (Emphasis supplied.)

27. This "Park Service Organic Act" has been supplemented and updated by subsequent law more than six dozen times reflecting Congressional intent to shape how the National Park Service operates and cares for our national parks, monuments, *etc*.

28. For instance, several of those supplemental "Organic" laws, 16 U.S.C. §§ 1f, 1g, 1j, 17l, 17m, reflect Congressional intent that the National Park Service coordinate

certain efforts, collaborate and cooperate with state and local public and private entities to share costs and to plan for and to protect natural resources of each unit of the National Park System.

29. Another such supplemental "Organic" law governing the National Park Service's behavior is 16 U.S.C. § 3, which is titled "Rules and regulations of national parks, reservations, and monuments; timber; leases". Congress made its intent clear that the National Park Service could, among other things, enter into contracts and agreements with anyone to lease, rent or grant rights in the use of certain natural areas or objects of interest on such terms as not to interfere with "free" public access; however,

> "...No natural curiosities, wonders, or objects of interest shall be leased, rented, or granted to anyone on such terms as to interfere with free access to them by the public..."

2. <u>Great Smoky Mountains National Park</u>

30. The Smoky Mountains has a special legal status in our society. The Smoky Mountains' creation and organization are likewise according to law, and each law reflects certain and understood Congressional intentions of the defendant National Park Service's charge to manage and care for the Smoky Mountains.

31. The Great Smoky Mountains National Park and the Shenandoah National Park in Virginia were both created simultaneously pursuant law, 16 U.S.C. § 403.

> "When title to lands within the areas hereinafter referred to shall have been vested in the United States in fee simple there are established, dedicated, and set apart as public parks for the benefit and enjoyment of the people, the tract of land in the Blue Ridge, in the State of Virginia, being approximately five hundred and twenty-one thousand acres recommended

> by the Secretary of the Interior in his report of April 14, 1926, which area, or any part or parts thereof as may be accepted on behalf of the United States in accordance with the provisions hereof, shall be known as the Shenandoah National Park; and the tract of land in the Great Smoky Mountains in the States of North Carolina and Tennessee being approximately seven hundred and four thousand acres, recommended by the Secretary of the Interior in his report of April 14, 1926, which area, or any part or parts thereof as may be accepted on behalf of the United States in accordance with the provisions hereof, shall be known as the Great Smoky Mountains National Park: *Provided*, That the United States shall not purchase by appropriation of public moneys any land within the aforesaid areas, but that such lands shall be secured by the United States only by public or private donation."

32. Passage of 16 U.S.C. § 403(a), lead to authorization to accept land donated for the Smoky Mountains. The law's title was "Acceptance of title to lands", and it stated:

> "The Secretary of the Interior is authorized, in his discretion, to accept as hereinafter provided on behalf of the United States title to the lands referred to in section 403 of this title and to be purchased with the $1,200,000 which has been subscribed by the State of Virginia and the Shenandoah National Park Association of Virginia and with other contributions for the purchase of lands in the Shenandoah National Park area, and with the $1,066,693 which has been subscribed by the State of Tennessee and the Great Smoky Mountains Conservation Association and by the Great Smoky Mountains (Incorporated) (North Carolina) and with other contributions for the purchase of lands in the Great Smoky Mountains National Park area."

33. There have been two dozen subsequent federal laws enacted covering the management and care of the Smoky Mountains, including 16 U.S.C. § 403g, establishing a minimum area of the Smoky Mountains.

> "An area of four hundred thousand acres within the minimum boundaries of the Great Smoky Mountains National Park, acquired one-half by the peoples and States of North Carolina and Tennessee, and the United States, and one-half by the Laura Spelman Rockefeller Memorial in memory of

> Laura Spelman Rockefeller, is established as a completed park for administration, protection, and development by the United States."

34. Carlos C. Campbell wrote a book called "Birth Of A National Park In The Great Smoky Mountains", and Chapter 2 is titled "The Result Of An Idea". It begins:

> "...HISTORY was made, and a precedent for the creation of future national parks was set in the establishment of the Great Smoky Mountains National Park. Creation of the eighteen national parks prior to 1924 had been accomplished by the setting aside of lands which already belong to the federal government. Not so with the Great Smokies. The 515,225.8 acres constituting this park were then in private ownership, in more than 6,600 separate tracts. Approximately one-third of this area was still primeval forest. On some of the remaining acreage there had been only selective cutting of timber. Much of the rest was in varying stages of reforestation, after having been cut over by lumber companies or cleared by mountain farmers.
>
> Most–over 85 per cent–of the area was owned by eighteen timber and pulpwood companies. Some 1,200 tracts were farms of various sizes. Worse of all, however, from the land-buying standpoint, was the fact that there were over 5,000 lots and summer homes. It was as difficult to buy some of these tiny plots as it was to get certain of the big holdings of lumber companies. Many of the lots had been `won' several years earlier in a promotional scheme, and it was impossible to locate some of the `owners,' who had never even bothered to pay taxes on their lots. A tremendous amount of effort went into getting the necessary legislation and money, and then into surveying, appraising, and buying the land. This part of the project required over ten years of full-scale activity, with several more years of winding up the lose ends.
>
> Prior to the 1923 launching of the successful movement (there had been previous movements and suggestions that were not successful), very few people knew anything about the Great Smoky Mountains..."[1]

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[1] Carlos C. Campbell "Birth Of A National Park in the Great Smoky Mountains, an unprecedented crusade which created, as a gift of the people, the nation's most popular national park." 1960, p. 12

35. In 1951, the State of Tennessee conveyed by Deed to the United States of America:

> "...all of the right, title, and interest of the State of Tennessee in and to any and all State Highways located on, over or within the lands which are a part of the Great Smoky Mountains National Park."
>
> However, the conveyance had reservations, including:
>
> "...No toll or license fee shall ever be imposed by the United States of America or any agency thereof for the use by the public of State Highways Nos. 71 and 73, and the rights is especially reserved unto the State of Tennessee to allow the public to use said highways..."

The deed is recorded in Book 106, Page 440, in the Sevier County Register of Deeds, and in Book 172, Page 55, in the Blount County Register of Deeds. Copies are attached hereto as Exhibits A and B, respectively.

36. The Great Smoky Mountains National Park is a special place in our American society that has been set aside for all citizens, now and in the future, to use and enjoy.

B. <u>Backpacking Inside the Smoky Mountains</u>

37. Plaintiff Southern Forest Watch's members and individual plaintiffs have been free to hike and camp in the backcountry areas of the Smoky Mountains under a volunteer registration system and with no charge. The system has been in effect and worked for almost a century since the Smoky Mountains became a national park.

38. There have been and are approximately 800 miles of trails and approximately100 undeveloped, backcountry campsites spread through the Smoky

Mountains.

39. Approximately 80% of those undeveloped, backcountry campsites are unrestricted on use other than registering the party and vehicles upon arrival at certain trailheads and designating destinations and itineraries for backcamping trips. There are no reservations required nor charges whatsoever for 80% of the campsites. Attached as Exhibit C hereto is a copy of a typical sign in sheet.

40. Backcountry campsites have no amenities or conveniences whatsoever other than fire rings and a system of pulleys and cables to hang backpacks out of the reach of bears. (It is to be noted that the "bear cables" were paid for with donations from Friends of the Smokies and installed by volunteers, not the defendants.) The fire rings have historically been made of rocks; however, recently the Park Service has provided round, metal rings in at least some of the backcountry campsites to serve as fire rings.

41. Backcountry campsites are generally flat areas located near creeks and springs where backpackers retrieve, filter and clean their own water. Backpackers cook food by boiling water on small backpacker stoves and hydrating dehydrated foods or by cooking food on a campfire.

42. The backcountry campsites have no designated, developed parking, no toilet facilities, no refuse containers or receptacles, no interpretive signs, exhibits or kiosk, no picnic tables, no security services, no marked tent or trailer spaces, no drinking water, no access roads, no reasonable visitor protection and facilities or amenities of any kind are provided at all the backcountry campsites.

43. Approximately 20% of campsites in use at any time in the Smoky Mountains have been and are "reserved campsites". All those "reserved campsites" exist exclusively of (1) backcountry Shelters along or near the Appalachian Trail that generally follows the Tennessee and North Carolina border and bisects the Smoky Mountains, and (2) undeveloped backcountry campsites that are in close proximity to roads, that are the easiest and closest campsites to access and have more use and traffic than most other backcountry campsites.

44. Under the previous system, reservations for the Appalachian Trail Shelters and these closest campsites were necessary with no charge. Reservations could be made in advance by either calling the Smoky Mountains at 865-436-1231, or by personally registering on the day of the trip at one of several ranger stations or kiosks. If and when you called and no one answered the reservation phone line, you would call back in later and someone would always answer the phone and take your reservation. It was a convenient system that allowed for the unimpaired use of the Smoky Mountains' backcountry.

45. There were never any charges, fees or taxes for reservations. While backpacking under the old system, there were never any concerns or worries that backpackers had to be prepared to "show your papers".

46. The Smoky Mountains were free to all and use of the backcountry was completely free and unimpeded. The system has worked for eight decades.

47. The Smoky Mountains' reservation system was called "Permits and

Planning" and has been in place for decades. Defendants described it as follows:

> "**Permits, How and Why**
> **The backcountry use permit is free but is required for all overnight camping in the backcountry**. If you intend to stay overnight in the backcountry, you will need a permit. The backcountry permit system is designed to protect the park and its solitude, both the quality of the nature environment and the quality of your experience. The National Park Service is charged with protecting the Smokies for the present and future generations to enjoy. The permit system is an attempt to enable you and others to love this wild place without loving it to death.
> **How to get your backcountry permit**. You may self-register for a permit at any ranger station by following posted instructions, but your itinerary may require access to a public pay telephone, as explained below.
> Some sites are rationed–see chart at right–because of heavy use. You must telephone the Backcountry Reservation Office to obtain permission for the use of those sites. Failure to do so invalidates your permit and puts you in violation of regulations and subject to a fine.
> If your itinerary includes at least one rationed site, we encourage you to make advance reservations up to a month ahead of the trip's start. To do so, you must plan your trip before your call and indicate exactly which site you intend to occupy for each night of your trip. If no rationed sites are involved, you may obtain your permit via self-registration upon your arrival in the park. The backcountry reservation office is open 7 days a week, from 8 a.m. to 6 p.m. The telephone number is (423) 436-1231..."

This description was shown on trail maps, and a copy is attached hereto as Exhibit D.

48. The self registration Permit and Planning system worked perfectly and seamlessly.

C. Misrepresentation and Disinformation Campaign

49. Defendant National Park Service sought permission from defendant US Department of Interior to implement a new internet reservation system and to charge a new, first time fee or tax for the right to backpack in the Smoky Mountains.

50. Defendant National Park Service represented to defendant US Department

of Interior and sought permission to implement the backpacker tax that would ***only cover the costs of internet reservation system***.

51. Defendant US Department of Interior gave defendant National Park Service permission to implement the new internet reservation system in the Smoky Mountains and to charge a fee that would ***only pay for the internet reservation system***.

52. That limited authority was described in an internal US Department of Interior "Memorandum" "F5419(5072)" from the "Regional Director, Southeast Region" to the "Acting Associate Director, Business Services, Washington Office." The memo is undated. Southern Forest Watch obtained the memorandum by a Freedom Of Information Act request. A copy of F5419(5072) is attached hereto as Exhibit E.

53. The Memorandum's "Subject" is: "Exception Requests for New/Increased Fees in the Southeast Region," and it includes the following statement:

> "...GRSM is proposing to institute a new fee for backcountry camping and shelter reservation and use. The park currently does not charge for these reservations and is proposing to begin charging a fee to cover the service charges and related costs of putting these sites onto the NRRS. The final actual fee will be determined through the civic engagement process and is likely to align with the total fees charged to the NPS by the NRRS. Having these sites on the NRRS will improve customer service for visitors wishing to reserve these sites as they will now have 24/7 access to reserve and/or change reservations rather than having to call the park during normal business hours. **There will be no increase in overall annual revenue as the result of this proposed increase as this will simply be a new fee to cover the recreation.gov service fees**..." (Emphasis supplied.)

54. To reiterate, the entire new reservation system as conceived and authorized would always and only generate funds sufficient to pay for the online reservation system.

There was never conceived, considered, understood or authorized funding of anything else, including funding of two new, backcountry rangers, *etc*.

55. This Exhibit E preexisted defendants' public campaign and announcements of the proposed new backcountry tax and reservation system.

56. Defendants started a public campaign to disseminate false information to drum up support for the backpacker tax and reservation system.

57. This Exhibit E reflects the defendants' public campaign to disseminate false information was intentional, fraudulent and in derogation of the values and purposes for which the Smoky Mountains was established and the high public value and integrity of the National Park System in violation of law, including16 U.S.C. § 1a-1.

58. Defendants began falsely asserting and publicly pronouncing a litany of justifications or reasons that the new reservation system and backpacker tax was necessary. The reasons given were false.

59. One justification was that the Smoky Mountains' backcountry campsites were burdened and were overcrowded. Defendants' own statistics proved that with the noteworthy exception of shelters along the Appalachian Trail and a mere handful of other undeveloped, backcountry campsites, that assertion was false.

60. Defendant also falsely pronounced that they had been "overrun" with complaints about problems with backcountry campsites. A Freedom of Information Request revealed that actually there had been a total of fifteen complaints for the previous three years, and most of those complaints came from a single individual who had ***nothing***

to do with backcountry campsites.

61. Additional false pronouncements were that the defendants' backcountry office was "understaffed" when the office was not understaffed; that Congressional Representatives and Senators had received "no" complaints about the imposition of backpacker tax and the new reservation system when they had received complaints; and defendants understated the amount of written opposition to the reservation system and backpacker tax.

62. Defendants also held sham and meaningless public meetings.

63. Defendants made repeated and further public pronouncements in local publications and on the internet that continued to be intentionally false and untruthful.

64. Defendants falsely, knowingly and intentionally misrepresented the new reservation system and backpacker tax would generate revenue sufficient to pay for any number of costly and purportedly necessary items, including paying for an increased ranger presence in the backcountry, when defendants knew full well that was not the case.

D. Political Patronage

65. Part of the "Organic" law governing the National Park Service's behavior is 16 U.S.C. § 3, which is titled "Rules and regulations of national parks, reservations, and monuments; timber; leases". Congress made its intent clear that the National Park Service could enter into contracts and agreements with anyone to lease, rent or grant rights in the use of certain natural areas or objects of interest on such terms as to not interfere with "free" public access. More particularly:

> "...**No natural curiosities, wonders, or objects of interest shall be leased, rented, or granted to anyone on such terms as to interfere with free access to them by the public**..." (Emphasis supplied.)

66. Ace Gap Trail is a backcountry trail that has existed within the Great Smoky Mountains National Park for ***decades***. The trail's location has existed for decades. Attached is a map from the Blount County Property Assessor's office, which ***appears*** to reflect, among other things, that Ace Gap Trail encroached on tract "1.13". That tract is 20.33 acres. The map is attached hereto as Exhibit F.

67. In 2004, a third party/former politician acquired tract 1.13, and soon thereafter, defendants or defendants' predecessors voluntarily and illegally diverted and rerouted Ace Gap Trail off of tract 1.13, further back into the park away from the third party/former politician's new home.

68. At the very least, that property became property of the Great Smoky Mountains National Park by eminent domain decades before the third party/former politician even acquired the property in 2004.

69. Defendants also closed at least two separate campsites that were apparently too close to the third party/former politician's property.

70. Additionally, defendants have apparently given permission to a local, private resort to maintain and utilize their own separate, exclusive network of trails into, on and within the boundaries the Smoky Mountains to the exclusion of everyone else.

71. This local, private resort has erected their own trail signs which appear to be within the Smoky Mountains' borders. The trail signs include boxes with this private

resort's own trail maps showing location of trails within the Smoky Mountains Park's borders. A copy of one private resort's trail map is attached as Exhibit G hereto.

72. What makes this network of private resort trails especially egregious and illegal is that the public is being denied free access to this section of the Smoky Mountains. Beard Cane Trail is a trail that has existed and climbs Hatcher Mountain in that portion of the Park for decades. Beard Cane Trail leads up to and intersects with the new private resort trail system; however, defendants closed Beard Cane Trail several years ago due to storm damage. Defendants have not reopened Beard Cane Trail, and, except for customers and residents of the private resort, that portion of the Park remains closed to the public.

73. The defendants are granting this private resort use of this portion of the Smoky Mountains to the exclusion of the public.

74. During 2009, plaintiffs witnessed riders on four wheelers driving on Cane Creek Trail within the borders of the Smoky Mountains using chain saws to widen trails. These trail riders identified themselves as being from the private resort. Pictures of the four wheelers are attached hereto as Exhibit H.

75. This private resort has denied to plaintiffs ever owning four wheelers or having knowledge of four wheelers chainsawing and maintaining trails within the borders of the Smoky Mountains.

76. Other "establishment favors" apparently include a private "outfitter" company over-booking trips to backcountry shelters in the Smoky Mountains. On a

website, http://www.rei.com/adventures/trips/weekend/smb.html, the private "outfitter" apparently has "dibs" on shelter reservations. A printout of the screen shot of this website is attached hereto as Exhibit I.

E. Backpacker Reservation System

77. The new Backcountry Permit System internet site requires one to have internet access and a credit card. Defendants are advising callers that internet access is available, however, only through a desktop/laptop computer system. Defendants are advising callers if one does not have email or internet access, reservations can be made by telephone or by personally appearing at Sugarland Visitor Center in the Smoky Mountains to pay cash and manually pick up a camping permit. Defendants are advising callers they can also fax a copy of the camping permit to a backpacker.

78. The website requires one making a campsite reservation to click through five different web pages before you are able to start making a campsite reservation. Thereafter, you must click through five more web pages to make your reservation. One page is a trail map with campsites. Another page is a calendar. Another page is to fill out personal information, and another page is to agree to be bound by old and new backpacking rules.

79. Reservations are allowed thirty days in advance.

80. You have to complete the entire reservation process within fifteen minutes, or you have to start over.

81. There has never been a charge for backcountry camping in the Smoky

Mountains' entire eight decades of existence. This new backpacker tax is $4.00, per person, per night.

82. Some of the new backpacking rules are ill-conceived and ludicrous. Backpackers suddenly are not permitted to burn paper in campfires, and all firewood must be no larger than someone's wrist. Backpackers are also forbidden from backpacking in the Smoky Mountains more than sixty days in a calendar year.

83. Camping is permitted only at designated backcountry campsites and shelters.

84. The Backcountry Permit System also provides that an Appalachian Trail Thru-Hiker can obtain a non-refundable "Thru-Hiker Backcountry Permit" to hike through the Smoky Mountains for $20.00, and the "Thru-Hiker Backcountry Permit" is only valid for thirty eight days. The Appalachian Trail is 2,181 miles long, and only seventy miles of the Appalachian Trail passes through the Smoky Mountains. Except for a camping fee in Baxter State Park near Mt Katahdin in Maine, the Smoky Mountains section of the Appalachian Trail is the ***only*** place where backpacking is not free and a permit to backpack is required.

85. After eight decades, a backpacker is no longer free and able to merely show up at a trailhead, fill out a form, put the completed form in a box and start backpacking in the Smoky Mountains.

86. The new reservation system and backpacker tax is the epitome of impairment of the use and enjoyment of the Smoky Mountains.

COUNT I
Declaratory Judgment that Defendants' Intentional Public Misrepresentations and False Assertions Are In Violation Of 16 U.S.C. § 1a-1

87. Plaintiffs adopt and incorporate paragraphs 1 through 86 above as if specifically alleged or plead herein.

88. Defendants' deliberate and knowing misrepresentations and false pronouncements that ***excess proceeds*** would be generated from the new backpacker tax and would be available and used to increase services for backpackers and provide, among other things, 2 new backcountry rangers, when defendants actually knew there were not be any such ***excess proceeds***, violated defendants' 16 U.S.C. § 1a-1, fiduciary positions and legal obligations to protect, manage and administer the Smoky Mountains in such a manner and in light of the high public value and integrity of the National Park System and to exercise those obligations in derogation of the values and purposes for which the Smoky Mountains was established.

89. Plaintiffs are entitled to an order pursuant to 28 U.S.C. §§ 2201-2202, declaring and adjudging that Defendants' deliberate and knowing misrepresentations and false pronouncements about backpacker tax proceeds in order to drum up support for a backpacker tax violated 16 U.S.C. § 1a-1, *et seq*., and tarnished the high public value and integrity of the National Park System in derogation of the values and purposes for which the Smoky Mountains were established.

COUNT II
Declaratory Judgment that Defendants' Grants Of Free, Exclusive And Privileged Use Of The Smoky Mountains To Exclusion Of The Public Violates 16 U.S.C. § 3

90. Plaintiffs adopt and incorporate paragraphs 1 through 89 above as if specifically alleged or plead herein.

91. Defendants' grant of exclusive and lucrative license and rights to natural curiosities, wonders and objects of interest inside the Smoky Mountains to private entities and political elites on such terms as to interfere with the free access to those natural curiosities, wonders and objects by the public, including backpackers, violates 16 U.S.C. § 3.

92. Plaintiffs are entitled to an order pursuant to 28 U.S.C. §§ 2201-2202, declaring and adjudging that Defendants' exclusive license and rights to natural curiosities, wonders and objects of interest inside the Smoky Mountains to a private entities and political elites to the exclusion of the public, including backpackers, violates 16 U.S.C. § 3.

COUNT III
Declaratory Judgment that Defendants Are Not Allowed To Charge A Backpacker Fee Under 16 U.S.C.A. § 6801, *et seq*, the Federal Lands Recreation Enhancement Act or "FLREA"

93. Plaintiffs adopt and incorporate paragraphs 1 through 92 above as if specifically alleged or plead herein.

94. Pursuant to deed restrictions of record, defendants are not entitled to charge

for use of roads inside the Smoky Mountains.

95. The Federal Lands Recreation Enhancement Act, or "FLREA" also includes a prohibition for charging certain fees in the Smoky Mountains. More particularly, 16 U.S.C.A.§ 6802(d)(3)(E) provides:

> "The Secretary shall not charge an entrance fee or standard amenity recreation fee for the following:
>
> > "...(E) Entrance on other routes into the Great Smoky Mountains National Park ***or any part thereof*** unless fees are charged for entrance into that park on main highways and thoroughfares..." (Emphasis supplied.)

96. Plaintiffs are entitled to an order pursuant to 28 U.S.C. §§ 2201-2202, declaring and adjudging that the restrictions of record precluding defendants' the right to charge for the use the donated roads within the Smoky Mountains combined with those restrictions set forth in16 U.S.C.A. §§ 6802(d)(3)(E), together and separately, legally preclude defendants from charging any fees whatsoever inside the Smoky Mountains on "any part thereof", including in the backcountry.

COUNT IV
Declaratory Judgment that Backpackers Are Not Limited To Backpacking To Areas Designated For Collection Of The Tax And May Backpack Anywhere In The Smoky Mountains

97. Plaintiffs adopt and incorporate paragraphs 1 through 96 above as if specifically alleged or plead herein.

98. Additionally, 16 U.S.C.A § 6802(d)(4), is titled "No restriction on recreation opportunities," and it states:

"...Nothing in this chapter shall limit the use of recreation opportunities only to areas designated for collection of recreation fees.

99. Plaintiffs are entitled to an order pursuant to 28 U.S.C. §§ 2201-2202, declaring and adjudging that the plaintiffs are not limited to backpacking in, on and around designated campsites and are free to backpack in areas beyond areas designated for collection of the backpacker tax.

COUNT V
Declaratory Judgment that Defendants' Are Not Allowed To Implement A New Backpacker Reservation System and Charge A Backpacker Fee Under 16 U.S.C.A. § 1, *et seq*,

100. Plaintiffs adopt and incorporate paragraphs 1 through 99 above as if specifically alleged or plead herein.

101. The decades old system of freely and in a completely unimpaired fashion of arriving at the Smoky Mountains, filling out and depositing an information slip in a box at a trailhead and going backpacking was the epitome of a free and unimpaired registration system.

102. For almost 1 century, the defendant National Park Service, under the exact same fiduciary duties and obligations to preserve, protect and allow for the use and enjoyment Smoky Mountains that the defendants are currently bound, carried forth this free and unimpaired registration system with no problems or issues whatsoever, again for almost 1 century.

103. Then based on false pretenses and with no factual support, justification or honest reasons, the defendants replaced this registration system with a new internet

registration system that takes time, effort, inconvenience and money to be able to backpack in the Smoky Mountains.

104. The new reservation system with a backpacker tax when compared with an eighty year tested system does not provide visitors to the Smoky Mountains with any specific or specialized facility, equipment or service to entitle defendants to charge a fee or tax.

105. 16 U.S.C.A. 6802(g), titled "Expanded amenity recreation fee" provides:

> "(1) NPS and USFWS authority
> Except as limited by subsection (d), the Secretary of the Interior may charge an expanded amenity recreation fee, either in addition to an entrance fee or by itself, at Federal recreational lands and waters under the jurisdiction of the National Park Service or the United States Fish and Wildlife Service **when the Secretary of the Interior determines that the visitor uses a specific or specialized facility, equipment, or service**." (Emphasis supplied)

106. Plaintiffs are entitled to an order pursuant to 28 U.S.C. §§ 2201-2202, declaring and adjudging that the new reservation system with a backpacker tax when compared with an 80 year tested system does not provide visitors to the Smoky Mountains with any specific or specialized facility, equipment or service to entitle defendants to charge a fee or tax pursuant to 16 U.S.C.A. 6802(g).

107. Plaintiffs are entitled to an order pursuant to 28 U.S.C. §§ 2201-2202, declaring and adjudging that the new reservation system with a backpacker tax does not do any more to conserve the scenery and the natural and historic objects and the wild life therein and provide for the enjoyment of same than the previous backpacker self

registration system that existed for approximate 8 decades; and that the new reservation system with backpacker tax results in an impairment of the enjoyment of the Smoky Mountains in violation of 16 U.S.C. § 1, *et seq*.

COUNT VI
Declaratory Judgment that Defendants' Adoption Of The New Backpacker Reservation System Exceeds The Authority Provided to Defendants

108. Plaintiffs adopt and incorporate paragraphs 1 through 107 above as if specifically alleged or plead herein.

109. Defendants' adoption of the new reservation system and backpacker tax is in excess of authority granted to defendants in Memorandum F5419(5072), Exhibit E, in that defendants' was authorized to implement the new reservation system and backpacker tax in order to fund the internet reservation system alone, and not to fund anything further.

110. Plaintiffs are entitled to an order pursuant to 28 U.S.C. §§ 2201-2202, declaring and adjudging that the new reservation system with a backpacker tax exceeds the authority provided to defendants as outlined in Memorandum F5419(5072), Exhibit E.

COUNT VII
Declaratory Judgment that Defendants' Are Not Allowed To Implement A New Backpacker Reservation System and Charge A Backpacker Fee Under 5 U.S.C. § 701, *et seq*,

111. Plaintiffs adopt and incorporate paragraphs 1 through 110 above as if specifically alleged or plead herein.

112. This cause of action for plaintiffs' claims is the judicial review provision of

the Administrative Procedure Act, 5 U.S.C. § 701-706. The challenged final agency action in these proceedings is the implementation of an online reservation system and corresponding backpacker tax inside the Smoky Mountains along with corresponding new rules and regulations.

113. 5 U.S.C.A. § 702, provides:

> "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

114. Plaintiffs are entitled to an order pursuant to 28 U.S.C. §§ 2201-2202, declaring and adjudging that defendants' process and decision to implement the new reservation system with a backpacker tax is arbitrary and capricious and violates 5 U.S.C. § 706, because the facts on which defendants relied in making its decision have no basis in the record, the judgment that a reasonable decision maker could not respond to the facts as defendants did, and that defendants lacked reasoned decisionmaking and therefore violated the Administrative Procedures Act and should therefore be reversed.

115. Defendants also considered irrelevant data and factors Congress did not intend for it to consider.

COUNT VIII
Declaratory Judgment that Defendants Failed To Comply with Public Participation Required By Law

116. Plaintiffs adopt and incorporate paragraphs 1 through 115, above as if specifically alleged or plead herein.

117. 16 U.S.C. § 6803 is titled "Public participation," and it sets forth steps the

Secretary must take to obtain input from a locality before charging a recreation fee.

118. 5 U.S.C .§ 553 provides "...the agency shall give interested persons an opportunity to participate in the rule making..."

119. Attached as Exhibit J is a resolution of the Blount County Commission resolving to oppose the backpacker tax ***after*** it was implemented by the defendants.

120. Plaintiffs are entitled to an order pursuant to 28 U.S.C. §§ 2201-2202, declaring and adjudging that defendants' actions in holding sham and meaningless public meetings and thereby precluding the most critical factual materials that purportedly were used to support the defendants' position on review has not been made public in the proceeding and exposed to refutation. Serious procedural errors have occurred precluding meaningful commentary because defendants failed to allow accurate and sufficient bases for the proposed backpacker reservation system and backpacker tax. Defendants' explanations lack evidentiary support and cannot be regarded as "reasoned" or "rational".

COUNT IX
Declaratory Judgment that Defendants Promulgation Of The Backpacker Reservation System and Backpacker Tax Was Arbitrary, Capricious, An Abuse Of Discretion And Not In Accordance With Law Pursuant To 5 U.S.C. § 706(2)(A)

121. Plaintiffs adopt and incorporate paragraphs 1 through 120, above as if specifically alleged or plead herein.

122. The entire adjudicatory process was flawed and skewed from the beginning and throughout, and there was clear error of judgment. Defendants' discretion is still

limited and defendants are bound by statutory framework of the program administered by defendants and, thus, a court can review an administrator's decision to insure that he neither included in his analysis factors irrelevant to the congressional purpose of the program he administers, nor factors which Congress has indicated are highly significant.

123. Defendants have failed to consider relevant data, ignored evidence placed before it by plaintiffs and other interested parties and manufactured false data lacking evidentiary support to support pre-conclusions. Defendants have abused their discretion by failing to provide a full ventilation of the issues and making a decision to impose the backpacker reservation system and backpacker tax without a reasonable basis.

124. Plaintiffs are entitled to an order pursuant to 28 U.S.C. §§ 2201-2202, declaring and adjudging that defendants adjudication is arbitrary, capricious, an abuse of discretion and not according to law.

WHEREFORE, Plaintiffs pray for a judgment against defendants as follows:

1. That process issue against defendants;

2. That an order be entered declaring and adjudging that enforcement of the new backpacker tax and backpacker reservation system in the Smoky Mountains is void as applied to plaintiffs;

3. That plaintiffs be awarded an order pursuant to Federal Rule of Civil Procedure 65 temporarily or permanently restraining or enjoining defendants from implementing either the new backpacker reservation system and/or the backpacker tax;

4. That alternatively, remand the decision to the agency for further

consideration because the agency did not adequately consider all viewpoints which it was required to consider and follow statutory requirements;

5. That plaintiffs be awarded attorney fees and costs pursuant to the Equal Access To Justice Act, 28 U.S.C. § 2412.

6. For all other relief the Court may deem just and proper.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF

Respectfully submitted this 2nd day of March, 2013.

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